

DENY; and Opinion Filed November 14, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-01303-CV

IN RE CITY OF MESQUITE, TEXAS, Relator

**Original Proceeding from the 86th Judicial District Court
Kaufman County, Texas
Trial Court Cause No. 98718-86**

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Boatright
Opinion by Justice Boatright

In this original proceeding, relator seeks relief from a November 10, 2017 temporary restraining order and injunction that enjoined relator from taking any action in furtherance of annexation proceedings related to certain property located in relator's extraterritorial jurisdiction. After requesting responses, real party in interest the State of Texas, *ex rel.* Kaufman County, Texas, and the intervenors, who are property owners, filed responses. Relator filed a reply to the responses this morning. Because we conclude that the trial court did not abuse its discretion in granting injunctive relief, we deny the petition for mandamus.

In its request for injunctive relief, the County alleged that the City violated the Texas Open Meetings Act (TOMA) and Texas Local Government Code by failing to provide proper notice of certain meetings and proper notice of the land sought to be annexed. In its response, relator did not address those allegations. Following an evidentiary hearing in which relator participated, the trial court signed a temporary restraining order and injunction prohibiting relator

from taking any action in furtherance of annexation proceedings until the trial court could issue a ruling regarding whether relator's actions were lawful and in compliance with TOMA and the Texas Local Government Code. The trial court set the injunction hearing for November 20, 2017.

Mandamus will issue if the relator establishes a clear abuse of discretion for which there is no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to correctly analyze or apply the law. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding).

In its petition for mandamus, relator does not address the intervenors' and County's allegations of TOMA and Local Government Code violations or their contention that injunctive relief was properly sought and obtained under TOMA. In its reply brief filed this morning, relator makes three arguments.

First, relator contends that the trial court abused its discretion because the property owners lacked standing to bring a quo warranto action attacking the proposed annexation. However, relator again does not address the parties' standing to enjoin violations of TOMA, which allows an interested person to "bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body." TEX. GOV'T CODE ANN. § 551.142(a) (West 2017).

Relator also argues that intervenors and the County have failed to satisfy the requirements for obtaining injunctive relief under *Finlan v. City of Dallas*, 888 F. Supp. 779 (N.D. Tex. 1995). The *Finlan* court explained that a party moving for injunctive relief under TOMA must show that there is a substantial likelihood of success on the merits; a substantial

threat of irreparable injury; the threatened injury to the movant outweighs threatened injury to the nonmovant; and injunctive relief will not disserve the public interest. However, the *Finlan* court concluded that the violations of TOMA alleged in that case satisfied all of those requirements. *Id.* at 790-791. Relator does not explain how the allegations of TOMA violations that satisfied the court in *Finlan* are materially different from those alleged here.

Finally, relator contends that if it cannot annex the properties in question today, it will not be able to annex them at all. Relator does not explain how that contention would establish that the trial court abused its discretion.

We conclude that relator has not established that the trial court's decision to grant injunctive relief was so arbitrary and unreasonable as to amount to a clear and prejudicial error of law, or that the trial court clearly failed to correctly analyze or apply the law. *In re Cerberus Capital Mgmt.*, 164 S.W.3d at 382. Therefore, relator is not entitled to mandamus relief. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 135–36.

Accordingly, we deny relator's petition for writ of mandamus.

/Jason Boatright/

JASON BOATRIGHT
JUSTICE

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